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[G.R. No. 110318. August 28, 1996]

COLUMBIA PICTURES, INC., ORION PICTURES CORPORATION, PARAMOUNT PICTURES CORPORATION, TWENTIETH CENTURY FOX FILM CORPORATION, UNITED ARTISTS CORPORATION, UNIVERSAL CITY STUDIOS, INC., THE WALT DISNEY COMPANY, and WARNER BROTHERS, INC., *petitioners, vs.* COURT OF APPEALS, SUNSHINE HOME VIDEO, INC. and DANILO A. PELINDARIO, *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; FOREIGN CORPORATIONS NOT DOING BUSINESS IN THE PHILIPPINES MAY SUE IN PHILIPPINE COURTS; LICENSE NOT NECESSARY.**— The obtainment of a license prescribed by Section 125 of the Corporation Code is not a condition precedent to the maintenance of any kind of action in Philippine courts by a foreign corporation. However, under the aforequoted provision, no foreign corporation shall be permitted to transact business in the Philippines, as this phrase is understood under the Corporation Code, unless it shall have the license required by law, and until it complies with the law in transacting business here, it shall not be permitted to maintain any suit in local courts. As thus interpreted, any foreign corporation not doing business in the Philippines may maintain an action in our courts upon any cause of action, provided that the subject matter and the defendant are within the jurisdiction of the court. It is not the absence of the prescribed license but "doing business" in the Philippines without such license

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which debars the foreign corporation from access to our courts. In other words, although a foreign corporation is without license to transact business in the Philippines, it does not follow that it has no capacity to bring an action. Such license is not necessary if it is not engaged in business in the Philippines. Based on Article 133 of the Corporation Code and gauged by such statutory standards, petitioners are not barred from maintaining the present action. There is no showing that, under our statutory or case law, petitioners are doing, transacting, engaging in or carrying on business in the Philippines as would require obtention of a license before they can seek redress from our courts. No evidence has been offered to show that petitioners have performed any of the enumerated acts or any other specific act indicative of an intention to conduct or transact business in the Philippines.

2. **ID.; ID.; FOREIGN CORPORATION; "DOING BUSINESS" OR "TRANSACTING BUSINESS," CONSTRUED.**— No general rule or governing principles can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its own peculiar environmental circumstances. The true tests, however, seem to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. As a general proposition upon which many authorities agree in principle, subject to such modifications as may be necessary in view of the particular issue or of the terms of the statute involved, it is recognized that a foreign corporation is "doing," "transacting," "engaging in," or "carrying on" business in the State when, and ordinarily only when, it has entered the State by its agent and is there engaged in carrying on and transacting through them some substantial part of its ordinary or customary business, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts. The Corporation

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Code does not itself define or categorize what acts constitute doing or transacting business in the Philippines. Jurisprudence has, however, held that the term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization.

3. **ID.; ID.; ID.; FACT THAT PETITIONERS ARE COPYRIGHT OWNERS OR OWNERS OF EXCLUSIVE DISTRIBUTION RIGHTS OF FILMS, NOT AN INDICATION OF "DOING BUSINESS."**— The fact that petitioners are admittedly copyright owners or owners of exclusive distribution rights in the Philippines of motion pictures or films does not convert such ownership into an indicium of doing business which would require them to obtain a license before they can sue upon a cause of action in local courts.

4. **ID.; ID.; ID.; APPOINTMENT OF AN ATTORNEY-IN-FACT, CANNOT BE DEEMED AS "DOING BUSINESS."**— Neither is the appointment of Atty. Rico V. Domingo as attorney-in-fact of petitioners, tantamount to doing business in the Philippines. We fail to see how exercising one's legal and property rights and taking steps for the vigilant protection of said rights, particularly the appointment of an attorney-in-fact, can be deemed by and of themselves to be doing business here.

5. **ID.; ID.; ID.; ENGAGING IN LITIGATION, NOT WITHIN THE MEANING OF "DOING BUSINESS."** — In accordance with the rule that "doing business" imports only acts in furtherance of the purposes for which a foreign corporation was organized, it is held that the mere institution and prosecution or defense of a suit, particularly if the transaction which is the basis of the suit took place out of the State, do not amount to the doing of business in the State. The institution of a suit or the removal thereof is neither the making of a contract

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nor the doing of business within a constitutional provision placing foreign corporations licensed to do business in the State under the same regulations, limitations and liabilities with respect to such acts as domestic corporations. Merely engaging in litigation has been considered as not a sufficient minimum contact to warrant the exercise of jurisdiction over a foreign corporation.

6. **REMEDIAL LAW; ACTIONS; MOTION TO DISMISS; LACK OF LEGAL CAPACITY TO SUE, DISTINGUISHED FROM LACK OF PERSONALITY TO SUE.**— Among the grounds for a motion to dismiss under the Rules of Court are lack of legal capacity to sue and that the complaint states no cause of action. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. On the other hand, a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action. The term "lack of capacity to sue" should not be confused with the term "lack of personality to sue." While the former refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party, the latter refers to the fact that the plaintiff is not the real party-in-interest. Correspondingly, the first can be a ground for a motion to dismiss based on the ground of lack of legal capacity to sue, whereas the second can be used as a ground for a motion to dismiss based on the fact that the complaint, on the face thereof, evidently states no cause of action.

7. **ID.; ID.; ID.; LACK OF LEGAL CAPACITY TO SUE, NOT LACK OF PERSONALITY TO SUE, PROPER GROUND AGAINST A FOREIGN CORPORATION DOING BUSINESS WITHOUT A LICENSE.**— As a consideration aside, we have perforce to comment on private respondents' basis for arguing that petitioners are

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barred from maintaining suit in the Philippines. For allegedly being foreign corporations doing business in the Philippines without a license, private respondents repeatedly maintain in all their pleadings that petitioners have thereby *no legal personality* to bring an action before Philippine courts. Applying the above discussion to the instant petition, the ground available for barring recourse to our courts by an unlicensed foreign corporation doing or transacting business in the Philippines should properly be "lack of capacity to sue," not "lack of personality to sue." Certainly, a corporation whose legal rights have been violated is undeniably such, if not the only, real party-in-interest to bring suit thereon although, for failure to comply with the licensing requirement, it is not capacitated to maintain any suit before our courts.

8. **ID.; ID.; ID.; DOCTRINE OF LACK OF CAPACITY TO SUE; NEVER INTENDED TO INSULATE FROM SUIT UNSCRUPULOUS ESTABLISHMENT FOR VIOLATION OF LEGAL RIGHTS OF UNSUSPECTING FOREIGN FIRMS.**— The doctrine of lack of capacity to sue based on failure to first acquire a local license is based on considerations of public policy. It was never intended to favor nor insulate from suit unscrupulous establishments or nationals in case of breach of valid obligations or violation of legal rights of unsuspecting foreign firms or entities simply because they are not licensed to do business in the country.

9. **ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; RULING IN CENTURY FOX CASE (164 SCRA 655), WITH NO RETROACTIVE APPLICATION.** — Mindful as we are of the ramifications of the doctrine of *stare decisis* and the rudiments of fair play, it is our considered view that the *20th Century Fox* ruling (164 SCRA 655) calling for the production of the master tape of the copyrighted films for determination of probable cause cannot be retroactively applied to the instant case to justify the quashal of Search Warrant No. 87-053. Article 4 of the Civil Code provides that "(l)aws shall have no

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retroactive effect, unless the contrary is provided. Correlatively, Article 8 of the same Code declares that "(j)udicial decisions applying the laws or the Contitution shall form part of the legal system of the Philippines." Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decision, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself. Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al.* that the principle of prospectivity applies not only to original or amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions.

10. ID.; ID.; ID.; ID.; RATIONALE.— Our holding in the earlier case of *People vs. Jabinal* echoes the rationale for this judicial declaration, *viz.*: Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretatio legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. x x x, but when a doctrine of this Court is overruled and a different view is adopted, *the new doctrine*

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should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

11. **ID.; COURTS; JUDICIAL INTERPRETATION BECOMES PART OF THE LAW OF THE LAND AS OF THE DATE THAT LAW WAS ORIGINALLY PASSED; QUALIFICATION.**— It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.

12. **ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; RULING IN CENTURY FOX CASE (164 SCRA 655) SERVES AS A GUIDEPOST IN DETERMINING EXISTENCE OF PROBABLE CAUSE IN COPYRIGHT INFRINGEMENT CASES ONLY WHERE THERE IS DOUBT AS TO THE TRUE NEXUS BETWEEN THE MASTER TAPE AND THE PIRATED COPIES.** — The supposed *pronunciamento* in said case regarding the necessity for the presentation of the master tapes of the copyrighted films for the validity of search warrants should at most be understood to merely serve as a guidepost in determining the existence of probable cause in copyright infringement cases *where there is doubt as to the true nexus between the master tape and the pirated copies.* An objective and careful reading of the decision in said case could lead to no other conclusion than that said directive was hardly intended to be a sweeping and inflexible requirement in all or similar copyright infringement cases. Judicial dicta should always be construed within the factual matrix of their parturition, otherwise a careless interpretation thereof could unfairly

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fault the writer with the vice of overstatement and the reader with the fallacy of undue generalization.

13. **ID.; ID.; ID.; RULING IN CENTURY FOX CASE (164 SCRA 655) DOES NOT RULE OUT USE OF TESTIMONIAL OR DOCUMENTARY EVIDENCE.—** It is evidently incorrect to suggest, as the ruling in *20th Century Fox* may appear to do, that in copyright infringement cases, the presentation of master tapes of the copyrighted films is always necessary to meet the requirement of probable cause and that, in the absence thereof, there can be no finding of probable cause for the issuance of a search warrant. It is true that such master tapes are object evidence, with the merit that in this class of evidence the ascertainment of the controverted fact is made through demonstrations involving the direct use of the senses of the presiding magistrate. Such auxiliary procedure, however, does not rule out the use of testimonial or documentary evidence, depositions, admissions or other classes of evidence tending to prove the *factum probandum*, especially where the production in court of object evidence would result in delay, inconvenience or expenses out of proportion to its evidentiary value.

14. **CONSTITUTIONAL LAW; BILL OF RIGHTS; CONSTITUTIONAL STANDARDS IN THE ISSUANCE OF SEARCH WARRANTS.—** Of course, as a general rule, constitutional and statutory provisions relating to search warrants prohibit their issuance except on a showing of probable cause, supported by oath or affirmation. These provisions prevent the issuance of warrants on loose, vague, or doubtful bases of fact, and emphasize the purpose to protect against all general searches. Indeed, Article III of our Constitution mandates in Sec. 2 thereof that no search warrant shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized; and Sec. 3 thereof provides that any

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evidence obtained in violation of the preceding section shall be inadmissible for any purpose in any proceeding.

15. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; MANDATORY REQUIREMENT OF EXISTENCE OF PROBABLE CAUSE.**— The constitutional (Sections 2 and 3, Article III) and statutory (Sections 3,4,5 of Rule 126 of the Rules of Court) provisions of various jurisdictions requiring a showing of probable cause before a search warrant can be issued are mandatory and must be complied with, and such a showing has been held to be an unqualified condition precedent to the issuance of a warrant. A search warrant not based on probable cause is a nullity, or is void, and the issuance thereof is, in legal contemplation, arbitrary.

16. **ID.; ID.; ID.; PROBABLE CAUSE, CONSTRUED.**— At best, the term "probable cause" has been understood to mean a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances as would excite an honest belief in a reasonable mind acting on all the facts and circumstances within the knowledge of the magistrate that the charge made by the applicant for the warrant is true. Probable cause does not mean actual and positive cause, nor does it import absolute certainty. The determination of the existence of probable cause is not concerned with the question of whether the offense charged has been or is being committed in fact, or whether the accused is guilty or innocent, but only whether the affiant has reasonable grounds for his belief. The requirement is *less than certainty or proof,* but *more than suspicion or possibility.* In Philippine jurisprudence, probable cause has been uniformly defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. It being the duty of the

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issuing officer to issue, or refuse to issue, the warrant as soon as practicable after the application therefor is filed, the facts warranting the conclusion of probable cause must be assessed at the time of such judicial determination by necessarily using legal standards *then set forth in law and jurisprudence, and not those that have yet to be crafted thereafter.*

17. **ID.; ID.; ID.; PRESCRIBED PROCEDURE FOR ISSUANCE THEREOF.**— The prescribed procedure for the issuance of a search warrant are: (1) the examination under oath or affirmation of the complainant and his witnesses, with them particularly describing the place to be searched and the things to be seized; (2) an examination personally conducted by the judge in the form of searching questions and answers, in writing and under oath of the complainant and witnesses on facts personally known to them; and, (3) the taking of sworn statements, together with the affidavits submitted, which were duly attached to the records.

18. **COMMERCIAL LAW; P.D. 49 (DECREE ON THE PROTECTION OF INTELLECTUAL PROPERTY); INFRINGEMENT OF COPYRIGHT, CONSTRUED.**— The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.

19. **ID.; ID.; INFRINGEMENT; COPY OF A PIRACY IS AN INFRINGEMENT OF THE ORIGINAL.**— A copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know what

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works he was indirectly copying, or did not know whether or not he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril. In determining the question of infringement, the amount of matter copied from the copyrighted work is an important consideration. To constitute infringement, it is not necessary that the whole or even a large portion of the work shall have been copied. If so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute a piracy.

20. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; MUST PARTICULARLY DESCRIBE THINGS TO BE SEIZED.**— A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People *vs.* Rubio, 57 Phil. 384); or when the description expresses a conclusion of fact - not of law - by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of Abad Santos, *J.*,); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). x x x. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence (*Bache and Co., Phil., Inc., et al. vs. Ruiz, et al.*).

21. **COMMERCIAL LAW; P.D. 49 (DECREE ON PROTECTION OF INTELLECTUAL PROPERTY); REGISTRATION AND DEPOSIT REQUIREMENT, PREREQUISITE ONLY TO A SUIT FOR DAMAGES.**— It is pointless for private respondents to insist on compliance with the registration and deposit requirements under Presidential Decree No. 49 as

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prerequisites for invoking the court's protective mantle in copyright infringement cases. As explained by the court below: As correctly pointed out by private complainants-oppositors, the Department of Justice has resolved this legal question as far back as December 12, 1978 in its Opinion No. 191 of the then Secretary of Justice Vicente Abad Santos which stated that Sections 26 and 50 do not apply to cinematographic works and PD No. 49 "had done away with the registration and deposit of cinematographic works" and that "even without prior registration and deposit of a work which may be entitled to protection under the Decree, the creator can file action for infringement of its rights." He cannot demand, however, payment of damages arising from infringement. The same opinion stressed that "the requirements of registration and deposit are thus retained under the Decree, not as conditions for the acquisition of copyright and other rights, but as prerequisites to a suit for damages." The statutory interpretation of the Executive Branch being correct, is entitled (to) weight and respect.

22. **ID.; ID.; RIGHTS THEREUNDER SUBSISTS FROM MOMENT OF CREATION.**— Section 2 of the decree prefaces its enumeration of copyrightable works with the explicit statement that "the rights granted under this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works." This means that under the present state of the law, the copyright for a work is acquired by an intellectual creator from the moment of creation even in the absence of registration and deposit.

23. **ID.; ID.; ABSENCE OF AUTHORITY OR CONSENT TO SELL, LEASE, DISTRIBUTE OR CIRCULATE COPYRIGHTED FILMS CONSTITUTES FILM PIRACY; LICENSE FROM THE VIDEOGRAM REGULATORY BOARD, NOT A BAR TO CIVIL AND CRIMINAL PROSECUTION.**— This case has been fought on the basis of, and its resolution long delayed by resort to, technicalities to a virtually abusive extent

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by private respondents, without so much as an attempt to adduce any credible evidence showing that they conduct their business legitimately and fairly. The fact that private respondents could not show proof of their authority or that there was consent from the copyright owners for them to sell, lease, distribute or circulate petitioners' copyrighted films immeasurably bolsters the lower court's initial finding of probable cause. That private respondents are licensed by the Videogram Regulatory Board does not insulate them from criminal and civil liability for their unlawful business practices.

APPEARANCES OF COUNSEL

Siguion Reyna, Montecillo & Ongsiako for petitioners.

Rodriguez & Verano Law Offices and *Cesar G. David* for private respondents.

DECISION

REGALADO, *J.*:

Before us is a petition for review on certiorari of the decision of the Court of Appeals[1] promulgated on July 22, 1992 and its resolution[2] of May 10, 1993 denying petitioners' motion for reconsideration, both of which sustained the order[3] of the Regional Trial Court, Branch 133, Makati, Metro Manila, dated November 22, 1988 for the quashal of Search Warrant No. 87-053 earlier issued per its own order[4] on September 5, 1988 for violation of

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[1] *Rollo*, CA-G.R. CV No. 20622, 155-158; Justice Quirino D. Abad-Santos, Jr., *ponente*, with Justice Luis A. Javellina and Eduardo R. Bengson, concurring; *Rollo*, 36-40.

[2] *Ibid.*, 184; *Ibid.*, 42.

[3] *Rollo*, 50-51; Original Record, 327-328.

[4] *Ibid.*, 43-49; *Ibid.*, 274-280; per Judge Buenaventura J. Guerrero.

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Section 56 of Presidential Decree No. 49, as amended, otherwise known as the "Decree on the Protection of Intellectual Property."

The material facts found by respondent appellate court are as follows:

Complainants thru counsel lodged a formal complaint with the National Bureau of Investigation for violation of PD No. 49, as amended, and sought its assistance in their anti-film piracy drive. Agents of the NBI and private researchers made discreet surveillance on various video establishments in Metro Manila including Sunshine Home Video Inc. (Sunshine for brevity), owned and operated by Danilo A. Pelindario with address at No. 6 Mayfair Center, Magallanes, Makati, Metro Manila.

On November 14, 1987, NBI Senior Agent Lauro C. Reyes applied for a search warrant with the court *a quo* against Sunshine seeking the seizure, among others, of pirated video tapes of copyrighted films all of which were enumerated in a list attached to the application; and, television sets, video cassettes and/or laser disc recordings equipment and other machines and paraphernalia used or intended to be used in the unlawful exhibition, showing, reproduction, sale, lease or disposition of videograms tapes in the premises above described. In the hearing of the application, NBI Senior Agent Lauro C. Reyes, upon questions by the court *a quo*, reiterated in substance his averments in his affidavit. His testimony was corroborated by another witness, Mr. Rene C. Baltazar. Atty. Rico V. Domingo's deposition was also taken. On the basis of the affidavits and depositions of NBI Senior Agent Lauro C. Reyes, Rene C. Baltazar and Atty. Rico V. Domingo, Search Warrant No 87-053 for violation of Section 56 of PD No. 49, as amended, was issued by the court *a quo*.

The search warrant was served at about 1:45 p.m. on December 14, 1987 to Sunshine and/or their representatives. In the course of the search of the premises indicated in the search warrant, the NBI Agents found and seized various video tapes of duly

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copyrighted motion pictures/films owned or exclusively distributed by private complainants, and machines, equipment, television sets, paraphernalia, materials, accessories all of which were included in the receipt for properties accomplished by the raiding team. Copy of the receipt was furnished and/or tendered to Mr. Danilo A. Pelindario, registered owner-proprietor of Sunshine Home Video.

On December 16, 1987, a "Return of Search Warrant" was filed with the Court.

A "Motion To Lift the Order of Search Warrant" was filed but was later denied for lack of merit (p. 280, Records).

A Motion for reconsideration of the Order of denial was filed. The court *a quo* granted the said motion for reconsideration and justified it in this manner:

> "It is undisputed that the master tapes of the copyrighted films from which the pirated films were allegedly copies (sic), were never presented in the proceedings for the issuance of the search warrants in question. The orders of the Court granting the search warrants and denying the urgent motion to lift order of search warrants were, therefore, issued in error. Consequently, they must be set aside." (p. 13, Appellant's Brief)[5]

Petitioners thereafter appealed the order of the trial court granting private respondents' motion for reconsideration, thus lifting the search warrant which it had therefore issued, to the Court of Appeals. As stated at the outset, said appeal was dismissed and the motion for reconsideration thereof was denied. Hence, this petition was brought to this Court particularly challenging the validity of respondent court's retroactive application of the ruling in *20th Century Fox Film Corporation vs. Court of Appeals, et al.*,[6] in dismissing petitioners' appeal and upholding the quashal of the search warrant by the trial court.

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[5] *Ibid.*, 36-37; *Rollo*, CA-G.R. CV No. 20622, 155-156.

[6] G.R. Nos. 76649-51, August 19, 1988, 164 SCRA 655.

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Inceptively, we shall settle the procedural considerations on the matter of and the challenge to petitioners' legal standing in our courts, they being foreign corporations not licensed to do business in the Philippines.

Private respondents aver that being foreign corporations, petitioners should have such license to be able to maintain an action in Philippine courts. In so challenging petitioners' personality to sue, private respondents point to the fact that petitioners are the copyright owners or owners of exclusive rights of distribution in the Philippines of copyrighted motion pictures or films, and also to the appointment of Atty. Rico V. Domingo as their attorney-in-fact, as being constitutive of "doing business in the Philippines" under Section 1(f)(1) and (2), Rule 1 of the Rules of the Board of Investments. As foreign corporations doing business in the Philippines, Section 133 of Batas Pambansa Blg. 68, or the Corporation Code of the Philippines, denies them the right to maintain a suit in Philippine courts in the absence of a license to do business. Consequently, they have no right to ask for the issuance of a search warrant.[7]

In refutation, petitioners flatly deny that they are doing business in the Philippines,[8] and contend that private respondents have not adduced evidence to prove that petitioners are doing such business here, as would require them to be licensed by the Securities and Exchange Commission, other than averments in the quoted portions of petitioners' "Opposition to Urgent Motion to Lift Order of Search Warrant" dated April 28, 1988 and Atty. Rico V. Domingo's affidavit of December 14, 1987. Moreover,

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[7] Original Record, 236-239; *Rollo*, 83-85, 188-190.

[8] *Ibid.*, 267-268; *Ibid.*, 124; *Ibid.*, 114-115, 169-170.

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an exclusive right to distribute a product or the ownership of such exclusive right does not conclusively prove the act of doing business nor establish the presumption of doing business.[9]

The Corporation Code provides:

Sec. 133. *Doing business without a license.* — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The obtainment of a license prescribed by Section 125 of the Corporation Code is not a condition precedent to the maintenance of any kind of action in Philippine courts by a foreign corporation. However, under the aforequoted provision, no foreign corporation shall be permitted to transact business in the Philippines, as this phrase is understood under the Corporation Code, unless it shall have the license required by law, and until it complies with the law in transacting business here, it shall not be permitted to maintain any suit in local courts.[10] As thus interpreted, any foreign corporation not doing business in the Philippines may maintain an action in our courts upon any cause of action, provided that the subject matter and the defendant are within the jurisdiction of the court. It is not the absence of the prescribed license but "doing business" in the Philippines without such license which debars the foreign corporation from access to our courts. In other words, although a foreign corporation is without

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[9] *Rollo*, 114-115, 169-170.

[10] Marshall-Wells Co. *vs.* Henry W. Elser & Co., 46 Phil. 71 (1924).

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license to transact business in the Philippines, it does not follow that it has no capacity to bring an action. Such license is not necessary if it is not engaged in business in the Philippines.[11]

Statutory provisions in many jurisdictions are determinative of what constitutes "doing business" or "transacting business" within that forum, in which case said provisions are controlling there. In others where no such definition or qualification is laid down regarding acts or transactions falling within its purview, the question rests primarily on facts and intent. It is thus held that all the combined acts of a foreign corporation in the State must be considered, and every circumstance is material which indicates a purpose on the part of the corporation to engage in some part of its regular business in the State.[12]

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[11] Martin, T.C., Commentaries and Jurisprudence on Philippine Commercial Laws, Vol. 4, 1986, rev. ed., 371-372, citing Pacific Vegetable Oil Corporation *vs.* Singzon, L-7917, April 29, 1955, 96 Phil. 986 (unrep.) and Eastbound Navigation, Ltd. *vs.* Juan Ysmael and Co., Inc., 102 Phil. 1 (1957), La Chemise Lacoste, S.A. *vs.* Fernandez, etc., et al., G.R. Nos. 63795-97, May 21, 1984, 129 SCRA 373; Antam Consolidated, Inc., et al. *vs.* Court of Appeals, et al., G.R. No. 61523, July 31, 1986, 143 SCRA 288; Converse Rubber Corporation *vs.* Universal Rubber Products, Inc., et al., L-27906, January 8, 1987, 147 SCRA 154; Puma Sportschuhfabriken Rudolf Dassler, K.G. *vs.* Intermediate Appellate Court, et al., G.R. No 75067, February 26, 1988, 158 SCRA 233; Merill Lynch Futures, Inc. *vs.* Court of Appeals, et al., G.R. No. 97816, July 24, 1992, 211 SCRA 824; Philip Morris, Inc., et al. *vs.* Court of Appeals, et al., G.R. No. 91332, July 16, 1993, 224 SCRA 576; Signetics Corporation *vs.* Court of Appeals, et al., G.R. No. 105141, August 31, 1993, 225 SCRA 737; Georg Grotjahn GMBH & Co. *vs.* Isnani, et al., G.R. No. 109272, August 10, 1994, 235 SCRA 216.

[12] Lopez, R.N., Corporation Code of the Philippines Annotated, Vol. 3, 1994 ed., 1152-1153, citing Com. *v.* Wilkesbarre & H.R. Co., 251 Pa 6, 95 Atl. 915.

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No general rule or governing principles can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its own peculiar environmental circumstances.[13] The true tests, however, seem to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.[14]

As a general proposition upon which many authorities agree in principle, subject to such modifications as may be necessary in view of the particular issue or of the terms of the statute involved, it is recognized that a foreign corporation is "doing," "transacting," "engaging in," or "carrying on" business in the State when, and ordinarily only when, it has entered the State by its agents and is there engaged in carrying on and transacting through them some substantial part of its ordinary or customary business, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts.[15]

The Corporation Code does not itself define or categorize what acts constitute doing or transacting business in the Philippines. Jurisprudence has, however, held that the term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of

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[13] 36 Am. Jur. 2d, Foreign Corporations, Sec. 317, 312-313; National Sugar Trading Corporation, et al. *vs.* Court of Appeals, et al., G.R. No. 110910, July 17, 1995, 246 SCRA 465.

[14] Martin, T.C., *op. cit.*, 373, citing Tracton Co. *v.* Collector of Internal Revenue, 223 F. 984.

[15] *Ibid.*, *Id.*, *Id.*, 314-315.

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the functions normally incident to or in progressive prosecution of the purpose and subject of its organization.[16]

This traditional case law definition has evolved into a statutory definition, having been adopted with some qualifications in various pieces of legislation in our jurisdiction.

For instance, Republic Act No. 5455[17] provides:

SECTION 1. *Definitions and scope of this Act.* — (1) x x x; and the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in-progressive prosecution of, commercial gain or of the purpose and object of the business organization.

Presidential Decree No. 1789,[18] in Article 65 thereof, defines "doing business" to include soliciting orders, purchases, service contracts, opening offices, whether called

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[16] Mentholatum Co., Inc. *vs.* Mangaliman, 92 Phil. 524 (1941).

[17] An Act to Require that the Making of Investments and the Doing of Business Within the Philippines by Foreigners or Business Organizations Owned in Whole or in Part by Foreigners Should Contribute to the Sound and Balanced Development of the National Economy on a Self-Sustaining Basis, and for Other Purposes; Enacted without executive approval, September 30, 1968.

[18] A Decree to Revise, Amend and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investments Code, effective January 16, 1981. See also Art. 44 of the Omnibus Investments Code of 1987 (Executive Order No. 226, effective July 16, 1987).

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"liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

The implementing rules and regulations of said presidential decree conclude the enumeration of acts constituting "doing business" with a catch-all definition, thus:

Sec. 1(g). 'Doing Business' shall be any act or combination of acts enumerated in Article 65 of the Code. In particular 'doing business' includes:

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(10) Any other act or acts which imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, or in the progressive prosecution of, commercial gain or of the purpose and object of the business organization.

Finally, Republic Act No. 7042[19] embodies such concept in this wise:

SEC. 3. *Definitions*. — As used in this Act:

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[19] An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines, and for Other Purposes; Approved, June 13, 1991.

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(d) the phrase "doing business shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eight(y) (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however*, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investors; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

Based on Article 133 of the Corporation Code and gauged by such statutory standards, petitioners are not barred from maintaining the present action. There is no showing that, under our statutory or case law, petitioners are doing, transacting, engaging in or carrying on business in the Philippines as would require obtention of a license before they can seek redress from our courts. No evidence has been offered to show that petitioners have performed any of the enumerated acts or any other specific act indicative of an intention to conduct or transact business in the Philippines.

Accordingly, the certification issued by the Securities and Exchange Commission[20] stating that its records do

[20] Exhibit 1; Original Record, 257.

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not show the registration of petitioner film companies either as corporations or partnerships or that they have been licensed to transact business in the Philippines, while undeniably true, is of no consequence to petitioners' right to bring action in the Philippines. Verily, no record of such registration by petitioners can be expected to be found for, as aforestated, said foreign film corporations do not transact or do business in the Philippines and, therefore, do not need to be licensed in order to take recourse to our courts.

Although Section 1(g) of the Implementing Rules and Regulations of the Omnibus Investments Code lists, among others —

(1) Soliciting orders, purchases (sales) or service contracts. Concrete and specific solicitations by a foreign firm, or by an agent of such foreign firm, not acting independently of the foreign firm amounting to negotiations or fixing of the terms and conditions of sales or service contracts, regardless of where the contracts are actually reduced to writing, shall constitute doing business even if the enterprise has no office or fixed place of business in the Philippines. The arrangements agreed upon as to manner, time and terms of delivery of the goods or the transfer of title thereto is immaterial. A foreign firm which does business through the middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines. But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines.

(2) Appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, i.e., it transacts business in its name and for its own account, and not in the name or for the account of a principal. Thus, where a foreign firm is represented in the Philippines by a person or local company which does not act in its name but in the name of the foreign firm, the latter is doing business in the Philippines.

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as acts constitutive of "doing business," the fact that petitioners are admittedly copyright owners or owners of exclusive distribution rights in the Philippines of motion pictures or films does not convert such ownership into an indicium of doing business which would require them to obtain a license before they can sue upon a cause of action in local courts.

Neither is the appointment of Atty. Rico V. Domingo as attorney-in-fact of petitioners, with express authority pursuant to a special power of attorney, *inter alia* —

> To lay criminal complaints with the appropriate authorities and to provide evidence in support of both civil and criminal proceedings against any person or persons involved in the criminal infringement of copyright, or concerning the unauthorized importation, duplication, exhibition or distribution of any cinematographic work(s) — films or video cassettes — of which x x x is the owner of copyright or the owner of exclusive rights of distribution in the Philippines pursuant to any agreement(s) between x x x and the respective owners of copyright in such cinematographic work(s), to initiate and prosecute on behalf of x x x criminal or civil actions in the Philippines against any person or persons unlawfully distributing, exhibiting, selling or offering for sale any films or video cassettes of which x x x is the owner of copyright or the owner of exclusive rights of distribution in the Philippines pursuant to any agreement(s) between x x x and the respective owners of copyright in such works.[21]

tantamount to doing business in the Philippines. We fail to see how exercising one's legal and property rights and taking steps for the vigilant protection of said rights, particularly the appointment of an attorney-in-fact, can be deemed by and of themselves to be doing business here.

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[21] Original Record, 268.

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As a general rule, a foreign corporation will not be regarded as doing business in the State simply because it enters into contracts with residents of the State, where such contracts are consummated outside the State.[22] In fact, a view is taken that a foreign corporation is not doing business in the state merely because sales of its product are made there or other business furthering its interests is transacted there by an alleged agent, whether a corporation or a natural person, where such activities are not under the direction and control of the foreign corporation but are engaged in by the alleged agent as an independent business.[23]

It is generally held that sales made to customers in the State by an independent dealer who has purchased and obtained title from the corporation to the products sold are not a doing of business by the corporation.[24] Likewise, a foreign corporation which sells its products to persons styled "distributing agents" in the State, for distribution by them, is not doing business in the State so as to render it subject to service of process therein, where the contract with these purchasers is that they shall buy exclusively from the foreign corporation such goods as it manufactures and shall sell them at trade prices established by it.[25]

It has moreover been held that the act of a foreign corporation in engaging an attorney to represent it in a

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[22] 36 Am. Jur. 2d, Foreign Corporations, Sec. 335, 336.

[23] *Ibid., Id.*, Sec. 632, 375-376.

[24] Cannon Mfg. Co. *v.* Cudahy Packing Co., 267 US 333, 69 L ed 634, 45 S Ct 250; Hessig-Ellis Drug Co. *v.* Sly, 83 Kan 60, 109 P 770; Barnes *v.* Maxwell Motor Sales Corporation, 172 Ky 409, 89 SW 444; Harrell *v.* Peters Cartridge Co., 36 Okla 684, 129 P 872.

[25] Gottschalk Co. *v.* Distilling & Cattle Feeding Co. (CC Md.), 50 F 681.

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Federal court sitting in a particular State is not doing business within the scope of the minimum contact test.[26] With much more reason should this doctrine apply to the mere retainer of Atty. Domingo for legal protection against contingent acts of intellectual piracy.

In accordance with the rule that "doing business" imports only acts in furtherance of the purposes for which a foreign corporation was organized, it is held that the mere institution and prosecution or defense of a suit, particularly if the transaction which is the basis of the suit took place out of the State, do not amount to the doing of business in the State. The institution of a suit or the removal thereof is neither the making of a contract nor the doing of business within a constitutional provision placing foreign corporations licensed to do business in the State under the same regulations, limitations and liabilities with respect to such acts as domestic corporations. Merely engaging in litigation has been considered as not a sufficient minimum contact to warrant the exercise of jurisdiction over a foreign corporation.[27]

As a consideration aside, we have perforce to comment on private respondents' basis for arguing that petitioners are barred from maintaining suit in the Philippines. For allegedly being foreign corporations doing business in the Philippines without a license, private respondents repeatedly maintain in all their pleadings that petitioners have thereby *no legal personality* to bring an action before Philippine courts.[28]

Among the grounds for a motion to dismiss under the Rules of Court are lack of legal capacity to sue[29] and that

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[26] O'Brien *v.* Lanpar Co. (Tex Civ App) 391 SW 2d 483.

[27] 36 Am. Jur. 2d, Foreign Corporation, Sec. 337, 339.

[28] Original Record, 236-237, 281-284; *Rollo*, CA-G.R. CV No. 20622, 100-102; *Rollo*, 83-85, 188-190.

[29] Sec. 1(d), Rule 16.

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the complaint states no cause of action.[30] Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims.[31] On the other hand, a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action.[32] The term "lack of capacity to sue" should not be confused with the term "lack of personality to sue." While the former refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party, the latter refers to the fact that the plaintiff is not the real party- in-interest. Correspondingly, the first can be a ground for a motion to dismiss based on the ground of lack of legal capacity to sue;[33] whereas the second can be used as a ground for a motion to dismiss based on the fact that the complaint, on the face thereof, evidently states no cause of action.[34]

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[30] Sec. 1(g), *Id.*

[31] Lunsod *vs.* Ortega, 46 Phil. 664 (1921); Recreation and Amusement Association of the Philippines *vs.* City of Manila, et al., 100 Phil. 950 (1957).

[32] Casimiro *vs.* Roque, et al., 98 Phil. 880 (1956); Gonzales, et al. *vs.* Alegarbes, 99 Phil. 213 (1956).

[33] Calano *vs.* Cruz, 91 Phil. 247 (1952). See also Arguelles *vs.* Syyap, 22 Phil. 442 (1912); Leviton Industries, et al. *vs.* Salvador, etc., et al., L-40163, June 19, 1982, 114 SCRA 420; Bulakhidas *vs.* Navarro, etc., et al., L-49695, April 7, 1986, 142 SCRA 1; Acain *vs.* Intermediate Appellate Court, et al., G.R. No. 72706, October 27, 1987, 155 SCRA 100; Pilipinas Shell Petroleum Corporation *vs.* Dumlao, etc., et al., L-44888, February 7, 1992, 206 SCRA 40.

[34] Sustiguer, et al. *vs.* Tamayo, et al., L-29341, August 21, 1989, 176 SCRA 579. See Annotations on Legal Capacity to Sue by Severino S. Tabios, following the published decision in La Chemise Lacoste, S.A. *vs.* Fernandez, etc., et al., *supra*, fn. 11.

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Applying the above discussion to the instant petition, the ground available for barring recourse to our courts by an unlicensed foreign corporation doing or transacting business in the Philippines should properly be "lack of capacity to sue," not "lack of personality to sue." Certainly, a corporation whose legal rights have been violated is undeniably such, if not the only, real party-in-interest to bring suit thereon although, for failure to comply with the licensing requirement, it is not capacitated to maintain any suit before our courts.

Lastly, on this point, we reiterate this Court's rejection of the common procedural tactics of erring local companies which, when sued by unlicensed foreign corporations not engaged in business in the Philippines, invoke the latter's supposed lack of capacity to sue. The doctrine of lack of capacity to sue based on failure to first acquire a local license is based on considerations of public policy. It was never intended to favor nor insulate from suit unscrupulous establishments or nationals in case of breach of valid obligations or violations of legal rights of unsuspecting foreign firms or entities simply because they are not licensed to do business in the country.[35]

II

We now proceed to the main issue of the retroactive application to the present controversy of the ruling in *20th Century Fox Film Corporation vs. Court of Appeals, et al.*, promulgated on August 19, 1988,[36] that for the

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[35] Facilities Management Corporation *vs.* De la Osa, et al., L-38649, March 26, 1979, 89 SCRA 131; Antam Consolidated, Inc., et al. *vs.* Court of Appeals, et al., and cases cited therein *supra*, fn. 11; Signetics Corporation *vs.* Court of Appeals, et al., *supra*, fn. 11; National Sugar Trading Corporation, et al. *vs.* Court of Appeals, et al., *supra*, fn. 13.

[36] 164 SCRA 655, fn. 6.

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determination of probable cause to support the issuance of a search warrant in copyright infringement cases involving videograms, the production of the master tape for comparison with the allegedly pirated copies is necessary.

Petitioners assert that the issuance of a search warrant is addressed to the discretion of the court subject to the determination of probable cause in accordance with the procedure prescribed therefor under Sections 3 and 4 of Rule 126. As of the time of the application for the search warrant in question, the controlling criterion for the finding of probable cause was that enunciated in *Burgos vs. Chief of Staff*[37] stating that:

> Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.

According to petitioners, after complying with what the law then required, the lower court determined that there was probable cause for the issuance of a search warrant, and which determination in fact led to the issuance and service on December 14, 1987 of Search Warrant No. 87-053. It is further argued that any search warrant so issued in accordance with all applicable legal requirements is valid, for the lower court could not possibly have been expected to apply, as the basis for a finding of probable cause for the issuance of a search warrant in copyright infringement cases involving videograms, a pronouncement which was not existent at the time of such determination, on December 14, 1987, that is, the doctrine in the *20th*

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[37] G.R. No. 64261, December 26, 1984, 133 SCRA 800.

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Century Fox case that was promulgated only on August 19, 1988, or over eight months later.

Private respondents predictably argue in support of the ruling of the Court of Appeals sustaining the quashal of the search warrant by the lower court on the strength of that *20th Century Fox* ruling which, they claim, goes into the very essence of probable cause. At the time of the issuance of the search warrant involved here, although the *20th Century Fox* case had not yet been decided, Section 2, Article III of the Constitution and Section 3, Rule 126 of the 1985 Rules on Criminal Procedure embodied the prevailing and governing law on the matter. The ruling in *20th Century Fox* was merely an application of the law on probable cause. Hence, they posit that there was no law that was retrospectively applied, since the law had been there all along. To refrain from applying the *20th Century Fox* ruling, which had supervened as a doctrine promulgated at the time of the resolution of private respondents' motion for reconsideration seeking the quashal of the search warrant for failure of the trial court to require presentation of the master tapes prior to the issuance of the search warrant, would have constituted grave abuse of discretion.[38]

Respondent court upheld the retroactive application of the *20th Century Fox* ruling by the trial court in resolving petitioners' motion for reconsideration in favor of the quashal of the search warrant, on this renovated thesis:

> And whether this doctrine should apply retroactively, it must be noted that in the 20th Century Fox case, the lower court quashed the earlier search warrant it issued. On certiorari, the Supreme Court affirmed the quashal on the ground among others that the master tapes or copyrighted films were not presented

[38] *Rollo*, 80-81.

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for comparison with the purchased evidence of the video tapes to determine whether the latter is an unauthorized reproduction of the former.

If the lower court in the Century Fox case did not quash the warrant, it is Our view that the Supreme Court would have invalidated the warrant just the same considering the very strict requirement set by the Supreme Court for the determination of 'probable cause' in copyright infringement cases as enunciated in this 20th Century Fox case. This is so because, as was stated by the Supreme Court in the said case, the master tapes and the pirated tapes must be presented for *comparison to satisfy the requirement of 'probable cause.'* So it goes back to the very existence of probable cause. x x x[39]

Mindful as we are of the ramifications of the doctrine of *stare decisis* and the rudiments of fair play, it is our considered view that the *20th Century Fox* ruling cannot be retroactively applied to the instant case to justify the quashal of Search Warrant No. 87-053. Herein petitioners' consistent position that the order of the lower court of September 5, 1988 denying therein defendants' motion to lift the order of search warrant was properly issued, there having been satisfactory compliance with the then prevailing standards under the law for determination of probable cause, is indeed well taken. The lower court could not possibly have expected more evidence from petitioners in their application for a search warrant other than what the law and jurisprudence, *then existing and judicially accepted*, required with respect to the finding of probable cause.

Article 4 of the Civil Code provides that "(l)aws shall have no retroactive effect, unless the contrary is provided. Correlatively, Article 8 of the same Code declares that

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[39] *Ibid.*, 39-40.

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"(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines."

Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law.[40] While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines.[41] Judicial decisions of the Supreme Court assume the same authority as the statute itself.[42]

Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al.*[43] that the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. Our holding in the earlier case of *People vs. Jubinal*[44] echoes the rationale for this judicial declaration, *viz.*:

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution

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[40] Tolentino, A.M., Commentaries and Jurisprudence on The Civil Code of the Philippines, Vol. I, 1990 ed., 36.

[41] Paras, E.L., Civil Code of the Philippines Annotated, 12th ed., 57.

[42] Caltex (Philippines), Inc. *vs.* Palomar, etc., L-19650, September 29, 1996, 18 SCRA 247; Floresca, et al. *vs.* Philex Mining Corporation, et al., L-30642, April 30, 1985, 136 SCRA 141.

[43] G.R. No. 100716, October 28, 1993, 227 SCRA 444, and cases cited therein.

[44] L-30061, February 27, 1974, 55 SCRA 607.

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shall form part of the legal system." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretation legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. x x x, but when a doctrine of this Court is overruled and a different view is adopted, *the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.* x x x. (Stress supplied).

This was forcefully reiterated in *Spouses Benzonan vs. Court of Appeals, et al.*,[45] where the Court expounded:

x x x. But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maximum *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (Francisco *v.* Certeza, 3 SCRA 565 [1961]). The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. x x x.

The reasoning behind *Senarillos vs. Hermosisima*[46] that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous

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[45] G.R. No. 97998, January 27, 1992, 205 SCRA 515.

[46] 100 Phil. 501 (1956). See also People *vs.* Licera, L-39990, July 22, 1975, 65 SCRA 270.

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legislative intent that the interpreted law carried into effect, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case.

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.[47] To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.[48]

There is merit in petitioners' impassioned and well-founded argumentation:

The case of 20th Century Fox Film Corporation *vs.* Court of Appeals, et al., 164 SCRA 655 (August 19, 1988) (hereinafter 20th Century Fox) was inexistent in December of 1987 when Search Warrant 87-053 was issued by the lower court. Hence, it boggles the imagination how the lower court could be expected to apply the formulation of 20th Century Fox in finding probable cause when the formulation was yet non-existent.

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In short, the lower court was convinced *at that time* after conducting searching examination questions of the applicant

[47] People *vs.* Jabinal, *supra*, fn. 44; Unciano Paramedical College, Inc., et al. *vs.* Court of Appeals, et al., G.R. No. 100335, April 7, 1993, 221 SCRA 285; Tañada, et al. *vs.* Guingona, Jr., etc., et al., G.R. No. 113888, August 19, 1994, 235 SCRA 507.

[48] De Agbayani *vs.* Philippine National Bank, et al., L-23127, April 29, 1971, 38 SCRA 429.

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and his witnesses that "an offense had been committed and that the objects sought in connection with the offense (were) in the place sought to be searched" (Burgos *v.* Chief of Staff, et al., 133 SCRA 800). It is indisputable, therefore, that at the time of the application, or on December 14, 1987, the lower court did not commit any error nor did it fail to comply with any legal requirement for the valid issuance of search warrant.

x x x. (W)e believe that the lower court should be considered as having followed the requirements of the law in issuing Search Warrant No. 87-053. The search warrant is therefore valid and binding. It must be noted that nowhere is it found in the allegations of the Respondents that the lower court failed to apply the law *as then interpreted in 1987.* Hence, we find it absurd that it is (sic) should be seen otherwise, because it is simply impossible to have required the lower court to apply a formulation which will only be defined six months later.

Furthermore, it is unjust and unfair to require compliance with legal and/or doctrinal requirements which are inexistent at the time they were supposed to have been complied with.

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x x x. If the lower court's reversal will be sustained, what encouragement can be given to courts and litigants to respect the law and rules if they can expect with reasonable certainty that upon the passage of a new rule, their conduct can still be open to question? This certainly breeds instability in our system of dispensing justice. For Petitioners who took special effort to redress their grievances and to protect their property rights by resorting to the remedies provided by the law, it is most unfair that fealty to the rules and procedures then obtaining would bear but fruits of injustice.[49]

Withal, even the proposition that the prospectivity of judicial decisions imports application thereof not only to future cases but also to cases still ongoing or not yet final

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[49] *Rollo*, 21-24, 159-163.

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when the decision was promulgated, should not be countenanced in the jural sphere on account of its inevitably unsettling repercussions. More to the point, it is felt that the reasonableness of the added requirement in *20th Century Fox* calling for the production of the master tapes of the copyrighted films for determination of probable cause in copyright infringement cases needs revisiting and clarification.

It will be recalled that the *20th Century Fox* case arose from search warrant proceedings in anticipation of the filing of a case for the unauthorized sale or renting out of copyrighted films in videotape format in violation of Presidential Decree No. 49. It revolved around the meaning of probable cause within the context of the constitutional provision against illegal searches and seizures, as applied to copyright infringement cases involving videotapes.

Therein it was ruled that —

> The presentation of master tapes of the copyrighted films from which the pirated films were allegedly copied, was necessary for the validity of search warrants against those who have in their possession the pirated films. The petitioner's argument to the effect that the presentation of the master tapes at the time of application may not be necessary as these would be merely evidentiary in nature and not determinative of whether or not a probable cause exists to justify the issuance of the search warrants is not meritorious. The court cannot presume that duplicate or copied tapes were necessarily reproduced from master tapes that it owns.
>
> The application for search warrants was directed against video tape outlets which allegedly were engaged in the unauthorized sale and renting out of copyrighted films belonging to the petitioner pursuant to P.D. 49.
>
> The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work. Hence, the applicant must present to

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the court the copyrighted films to compare them with the purchased evidence of the video tapes allegedly pirated to determine whether the latter is an unauthorized reproduction of the former. This linkage of the copyrighted films to the pirated films must be established to satisfy the requirements of probable cause. Mere allegations as to the existence of the copyrighted films cannot serve as basis for the issuance of a search warrant.

For a closer and more perspicuous appreciation of the factual antecedents of *20th Century Fox*, the pertinent portions of the decision therein are quoted hereunder, to wit:

In the instant case, the lower court lifted the three questioned search warrants against the private respondents on the ground that it acted on the application for the issuance of the said search warrants and granted it on the misrepresentations of applicant NBI and its witnesses that infringement of copyright or a piracy of a particular film have been committed. Thus the lower court stated in its questioned order dated January 2, 1986:

> "According to the movant, all three witnesses during the proceedings in the application for the three search warrants testified of their own personal knowledge. *Yet, Atty. Albino Reyes of the NBI stated that the counsel or representative of the Twentieth Century Fox Corporation will testify on the video cassettes that were pirated, so that he did not have personal knowledge of the alleged piracy. The witness Bacani also said that the video cassettes were pirated without stating the manner it was pirated and that it was Atty. Domingo that has knowledge of that fact.*
>
> "On the part of Atty. Domingo, he said that the re-taping of the allegedly pirated tapes was from master tapes allegedly belonging to the Twentieth Century Fox, because, according to him it is of his personal knowledge.
>
> "At the hearing of the Motion for Reconsideration, Senior NBI Agent Atty. Albino Reyes testified that *when the*

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complaint for infringement was brought to the NBI, the master tapes of the allegedly pirated tapes were shown to him and he made comparisons of the tapes with those purchased by their man Bacani. Why the master tapes or at least the film reels of the allegedly pirated tapes were not shown to the Court during the application gives some misgivings as to the truth of that bare statement of the NBI agent on the witness stand.

"Again as the application and search proceedings is a prelude to the filing of criminal cases under P.D. 49, the copyright infringement law, and although what is required for the issuance thereof is merely the presence of probable cause, that probable cause must be satisfactory to the Court, for it is a time-honored precept that proceedings to put a man to task as an offender under our laws should be interpreted in *strictissimi juris* against the government and liberally in favor of the alleged offender.

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"This doctrine has never been overturned, and as a matter of fact it had been enshrined in the Bill of Rights in our 1973 Constitution.

"*So that lacking in persuasive effect, the allegation that master tapes were viewed by the NBI and were compared to the purchased and seized video tapes from the respondents' establishments, it should be dismissed as not supported by competent evidence and for that matter the probable cause hovers in that grey debatable twilight zone between black and white resolvable in favor of respondents herein.*

"But the glaring fact is that 'Cocoon,' the first video tape mentioned in the search warrant, was not even duly registered or copyrighted in the Philippines. (Annex C of Opposition, p. 152, record.) So that lacking in the requisite presentation to the Court of an alleged master tape for purposes of comparison with the purchased evidence of the video tapes allegedly pirated and those

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seized from respondents, there was no way to determine whether there really was piracy, or copying of the film of the complainant Twentieth Century Fox."

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The lower court, therefore, lifted the three (3) questioned search warrants in the absence of probable cause that the private respondents violated P.D. 49. As found by the court, the NBI agents who acted as witnesses did not have personal knowledge of the subject matter of their testimony which was the alleged commission of the offense by the private respondents. Only the petitioner's counsel who was also a witness during the application for the issuance of the search warrants stated that he had personal knowledge that the confiscated tapes owned by the private respondents were pirated tapes taken from master tapes belonging to the petitioner. However, the lower court did not give much credence to his testimony in view of the fact that the master tapes of the allegedly pirated tapes were not shown to the court during the application" (Italics ours).

The italicized passages readily expose the reason why the trial court therein required the presentation of the master tapes of the allegedly pirated films in order to convince itself of the existence of probable cause under the factual milieu peculiar to that case. In the case at bar, respondent appellate court itself observed:

We feel that the rationale behind the aforequoted doctrine is that the pirated copies as well as the master tapes, unlike the other types of personal properties which may be seized, *were available for presentation to the court at the time of the application for a search warrant* to determine the existence of the linkage of the copyrighted films with the pirated ones. Thus, there is no reason not to present them (Italics supplied for emphasis).[50]

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[50] *Rollo*, 35.

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In fine, the supposed *pronunciamento* in said case regarding the necessity for the presentation of the master tapes of the copyrighted films for the validity of search warrants should at most be understood to merely serve as a guidepost in determining the existence of probable cause in copyright infringement cases *where there is doubt as to the true nexus between the master tape and the pirated copies*. An objective and careful reading of the decision in said case could lead to no other conclusion than that said directive was hardly intended to be a sweeping and inflexible requirement in all or similar copyright infringement cases. Judicial dicta should always be construed within the factual matrix of their parturition, otherwise a careless interpretation thereof could unfairly fault the writer with the vice of overstatement and the reader with the fallacy of undue generalization.

In the case at bar, NBI Senior Agent Lauro C. Reyes who filed the application for search warrant with the lower court following a formal complaint lodged by petitioners, judging from his affidavit[51] and his deposition,[52] did testify on matters within his personal knowledge based on said complaint of petitioners as well as his own investigation and surveillance of the private respondents' video rental shop. Likewise, Atty. Rico V. Domingo, in his capacity as attorney-in-fact, stated in his affidavit[53] and further expounded in his deposition[54] that he personally knew of the fact that private respondents had never been authorized by his clients to reproduce, lease and possess for the purpose of selling any of the copyrighted films.

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[51] Original Record, 4-7.

[52] *Ibid.*, 155-156.

[53] *Ibid.*, 12-15.

[54] *Ibid.*, 157-158.

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Both testimonies of Agent Reyes and Atty. Domingo were corroborated by Rene C. Baltazar, a private researcher retained by Motion Pictures Association of America, Inc. (MPAA, Inc.), who was likewise presented as a witness during the search warrant proceedings.[55] The records clearly reflect that the testimonies of the abovenamed witnesses were straightforward and stemmed from matters within their personal knowledge. They displayed none of the ambivalence and uncertainty that the witnesses in the *20th Century Fox* case exhibited. This categorical forthrightness in their statements, among others, was what initially and correctly convinced the trial court to make a finding of the existence of probable cause.

There is no originality in the argument of private respondents against the validity of the search warrant, obviously borrowed from *20th Century Fox*, that petitioners' witnesses — NBI Agent Lauro C. Reyes, Atty. Rico V. Domingo and Rene C. Baltazar — did not have personal knowledge of the subject matter of their respective testimonies and that said witnesses' claim that the video tapes were pirated, without stating the manner by which these were pirated, is a conclusion of fact without basis.[56] The difference, it must be pointed out, is that the records in the present case reveal that (1) there is no allegation of misrepresentation, much less a finding thereof by the lower court, on the part of petitioners' witnesses; (2) there is no denial on the part of private respondents that the tapes seized were illegitimate copies of the copyrighted ones nor have they shown that they were given any authority by petitioners to copy, sell, lease, distribute or circulate, or at least, to offer for sale, lease, distribution or circulation

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[55] *Ibid.*, 9-10, 159-160.

[56] *Rollo*, 85-86.

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the said video tapes; and (3) a discreet but extensive surveillance of the suspected area was undertaken by petitioner's witnesses sufficient to enable them to execute trustworthy affidavits and depositions regarding matters discovered in the course thereof and of which they have personal knowledge.

It is evidently incorrect to suggest, as the ruling in 20th Century Fox may appear to do, that in copyright infringement cases, the presentation of master tapes of the copyrighted films is always necessary to meet the requirement of probable cause and that, in the absence thereof, there can be no finding of probable cause for the issuance of a search warrant. It is true that such master tapes are object evidence, with the merit that in this class of evidence the ascertainment of the controverted fact is made through demonstrations involving the direct use of the senses of the presiding magistrate.[57] Such auxiliary procedure, however, does not rule out the use of testimonial or documentary evidence, depositions, admissions or other classes of evidence tending to prove the *factum probandum*,[58] especially where the production in court of object evidence would result in delay, inconvenience or expenses out of proportion to its evidentiary value.[59]

Of course, as a general rule, constitutional and statutory provisions relating to search warrants prohibit their issuance except on a showing of probable cause, supported by oath or affirmation. These provisions prevent the issuance of warrants on loose, vague, or doubtful bases of fact, and

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[57] City of Manila *vs.* Cabangis, 10 Phil. 151 (1908); Kabase *v.* State, 31 Ala. App. 77, 12 So. 2nd, 758, 764.

[58] See Phil. Movie Workers Association *vs.* Premiere Productions, Inc., 92 Phil. 843 (1953).

[59] See 3 Jones on Evidence, Sec. 1400.

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emphasize the purpose to protect against all general searches.[60] Indeed, Article III of our Constitution mandates in Sec. 2 thereof that no search warrant shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized; and Sec. 3 thereof provides that any evidence obtained in violation of the preceding section shall be inadmissible for any purpose in any proceeding.

These constitutional strictures are implemented by the following provisions of Rule 126 of the Rules of Court:

Sec. 3. *Requisites for issuing search warrant.* — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized.

Sec. 4. *Examination of complainant; record.* — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.

Sec. 5. *Issuance and form of search warrant.* — If the judge is thereupon satisfied of the existence of facts upon which the application is based, or that there is probable cause to believe that they exist, he must issue the warrant, which must be substantially in the form prescribed by these Rules.

The constitutional and statutory provisions of various jurisdictions requiring a showing of probable cause before a search warrant can be issued are mandatory and must

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[60] 47 Am. Jur. 2d, Searches and Seizures, Sec. 21, 576.

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be complied with, and such a showing has been held to be an unqualified condition precedent to the issuance of a warrant. A search warrant not based on probable cause is a nullity, or is void, and the issuance thereof is, in legal contemplation, arbitrary.[61] It behooves us, then, to review the concept of probable cause, firstly, from representative holdings in the American jurisdiction from which we patterned our doctrines on the matter.

Although the term "probable cause" has been said to have a well-defined meaning in the law, the term is exceedingly difficult to define, in this case, with any degree of precision; indeed, no definition of it which would justify the issuance of a search warrant can be formulated which would cover every state of facts which might arise, and no formula or standard, or hard and fast rule, may be laid down which may be applied to the facts of every situation.[62] As to what acts constitute probable cause seem incapable of definition.[63] There is, of necessity, no exact test.[64]

At best, the term "probable cause" has been understood to mean a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged[65]; or the existence of such facts and circumstances as would excite an honest belief in a reasonable mind acting on all the facts and circumstances within the knowledge of the

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[61] 79 CJS, Searches and Seizures, Sec. 74, 862.

[62] *Ibid., Id., Id.,* 863.

[63] Lucich *v.* State, Md., 71 A. 2d 432; Smith *v.* State, 62 A. 2d 287, 191 Md. 329, 5 A.L.R. 2d, 386.

[64] U.S. *v.* Nichols, D.C. Ark., 89 F. Supp. 953, 955.

[65] Silver *v.* State, 110 Tex Crim. Rep. 512, 8 SW (2d) 144, 9 SW (2d) 358, 60 A.L.R. 290.

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magistrate that the charge made by the applicant for the warrant is true.[66]

Probable cause does not mean actual and positive cause, nor does it import absolute certainty. The determination of the existence of probable cause is not concerned with the question of whether the offense charged has been or is being committed in fact, or whether the accused is guilty or innocent, but only whether the affiant has reasonable grounds for his belief.[67] The requirement is *less than certainty or proof, but more than suspicion or possibility*.[68]

In Philippine jurisprudence, probable cause has been uniformly defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched.[69] It being the duty of the issuing officer to issue, or refuse to issue, the warrant as soon as practicable after the application therefor is filed,[70] the facts warranting the conclusion of probable cause must be assessed at the time of such judicial determination by necessarily using legal standards *then set forth in law and jurisprudence, and not those that have yet to be crafted thereafter*.

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[66] Goodman *v.* State, 11 A. 2d 635, 639, 178 Md. 1.

[67] 47 Am. Jur. 2d, Searches and Seizures, Sec. 22, 516; Brinegar *v.* United States, 338 U.S. 160 (1949).

[68] 79 CJS, Search and Seizures, Sec. 74, 865.

[69] Burgos, Sr., et al. *vs.* Chief of Staff, et al., *supra*, fn. 37; Quintero *vs.* National Bureau of Investigation, et al., L-35149, June 23, 1988, 162 SCRA 467; MHP Garments, Inc., et al. *vs.* Court of Appeals, et al., G.R. No. 86720, September 2, 1994, 236 SCRA 227.

[70] State *v.* Perkins, 285 S.W. 1021, 220 Mo. App. 349.

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As already stated, the definition of probable cause enunciated in *Burgos, Sr. vs. Chief of Staff, et al., supra,* vis-a-vis the provisions of Sections 3 and 4 of Rule 126, were the prevailing and controlling legal standards, as they continue to be, by which a finding of probable cause is tested. Since the proprietary of the issuance of a search warrant is to be determined at the time of the application therefor, which in turn must not be too remote in time from the occurrence of the offense alleged to have been committed, the issuing judge, in determining the existence of probable cause, can and should logically look to the touchstones in the laws therefore enacted and the decisions already promulgated at the time, and not to those which had not yet even been conceived or formulated.

It is worth noting that neither the Constitution nor the Rules of Court attempt to define probable cause, obviously for the purpose of leaving such matter to the court's discretion within the particular facts of each case. Although the Constitution prohibits the issuance of a search warrant in the absence of probable cause, such constitutional inhibition does not command the legislature to establish a definition or formula for determining what shall constitute probable cause.[71] Thus, Congress, despite its broad authority to fashion standards of reasonableness for searches and seizures,[72] does not venture to make such a definition or standard formulation of probable cause, nor categorize what facts and circumstances make up the same, much less limit the determination thereof to and within the circumscription of a particular class of evidence, all in deference to judicial discretion and probity.[73]

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[71] State *v.* Norris, 109 So. 787, 161 La. 988.

[72] G.M. Leasing Corp. *v.* United States, 429 U.S. 338, 97 S Ct. 619, 50 L. Ed. 2d 530.

[73] See Central Bank of the Philippines *vs.* Morfe, et al., L-20119, June 30, 1967, 20 SCRA 507; Luna *vs.* Plaza, etc., et al., L-27511, November 29, 1968, 26 SCRA 310.

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Accordingly, to restrict the exercise of discretion by a judge by adding a particular requirement (the presentation of master tapes, as intimated by *20th Century Fox*) not provided nor implied in the law for a finding of probable cause is beyond the realm of judicial competence or statesmanship. It serves no purpose but to stultify and constrict the judicious exercise of a court's prerogatives and to denigrate the judicial duty of determining the existence of probable cause to a mere ministerial or mechanical function. There is, to repeat, no law or rule which requires that the existence of probable cause is or should be determined solely by a specific kind of evidence. Surely, this could not have been contemplated by the framers of the Constitution, and we do not believe that the Court intended the statement in *20th Century Fox* regarding master tapes as the dictum for all seasons and reasons in infringement cases.

Turning now to the case at bar, it can be gleaned from the records that the lower court followed the prescribed procedure for the issuance of a search warrant: (1) the examination under oath or affirmation of the complainant and his witnesses, with them particularly describing the place to be searched and the things to be seized; (2) an examination personally conducted by the judge in the form of searching questions and answers, in writing and under oath of the complainant and witnesses on facts personally known to them; and, (3) the taking of sworn statements, together with the affidavits submitted, which were duly attached to the records.

Thereafter, the court *a quo* made the following factual findings leading to the issuance of the search warrant now subject to this controversy:

In the instant case, the following facts have been established: (1) copyrighted video tapes bearing titles enumerated in Search

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Warrant No. 87-053 were being sold, leased, distributed or circulated, or offered for sale, lease, distribution, or transferred or caused to be transferred by defendants at their video outlets, without the written consent of the private complainants or their assignee; (2) recovered or confiscated from defendants' possession were video tapes containing copyrighted motion picture films without the authority of the complainant; (3) the video tapes originated from spurious or unauthorized persons; and (4) said video tapes were exact reproductions of the films listed in the search warrant whose copyrights or distribution rights were owned by complainants.

The basis of these facts are the affidavits and depositions of NBI Senior Agent Lauro C. Reyes, Atty. Rico V. Domingo, and Rene C. Baltazar. Motion Pictures Association of America, Inc. (MPAA) thru their counsel, Atty. Rico V. Domingo, filed a complaint with the National Bureau of Investigation against certain video establishments one of which is defendant, for violation of PD No. 49 as amended by PD No. 1988. Atty. Lauro C. Reyes led a team to conduct discreet surveillance operations on said video establishments. Per information earlier gathered by Atty. Domingo, defendants were engaged in the illegal sale, rental, distribution, circulation or public exhibition of copyrighted films of MPAA without its written authority or its members. Knowing that defendant Sunshine Home Video and its proprietor, Mr. Danilo Pelindario, were not authorized by MPAA to reproduce, lease, and possess for the purpose of selling any of its copyrighted motion pictures, he instructed his researcher, Mr. Rene Baltazar to rent two video cassettes from said defendants on October 21, 1987. Rene C. Baltazar proceeded to Sunshine Home Video and rented tapes containing Little Shop of Horror. He was issued rental slip No. 26362 dated October 21, 1987 for P10.00 with a deposit of P100.00. Again, on December 11, 1987, he returned to Sunshine Home Video and rented Robocop with rental slip No. 25271 also for P10.00. On the basis of the complaint of MPAA thru counsel, Atty. Lauro C. Reyes personally went to Sunshine Home Video at No. 6 Mayfair Center, Magallanes Commercial Center, Makati. His last visit was on December 7, 1987. There, he found the

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video outlet renting, leasing, distributing video cassette tapes whose titles were copyrighted and without the authority of MPAA.

Given these facts, a probable cause exists. x x x.[74]

The lower court subsequently executed a *volte-face*, despite its prior detailed and substantiated findings, by stating in its order of November 22, 1988 denying petitioners' motion for reconsideration and quashing the search warrant that —

x x x. The two (2) cases have a common factual milieu; both involve alleged pirated copyrighted films of private complainants which were found in the possession or control of the defendants. Hence, the necessity of the presentation of the master tapes from which the pirated films were allegedly copied is necessary in the instant case, to establish the existence of probable cause.[75]

Being based solely on an unjustifiable and improper retroactive application of the master tape requirement generated by *20th Century Fox* upon a factual situation completely different from that in the case at bar, and without anything more, this later order clearly defies elemental fair play and is a gross reversible error. In fact, this observation of the Court in *La Chemise Lacoste, S.A. vs. Fernandez, et al.*, *supra*, may just as easily apply to the present case:

A review of the grounds invoked x x x in his motion to quash the search warrants reveals the fact that they are not appropriate for quashing a warrant. They are matters of defense which should be ventilated during the trial on the merits of the case. x x x

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[74] Original Record, 277-278; *Rollo*, 46-47.

[75] *Ibid.*, 328; *Ibid.*, 51.

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As correctly pointed out by petitioners, a blind espousal of the requisite of presentation of the master tapes in copyright infringement cases, as the prime determinant of probable cause, is too exacting and impracticable a requirement to be complied with in a search warrant application which, it must not be overlooked, is only an ancillary proceeding. Further, on realistic considerations, a strict application of said requirement militates against the elements of secrecy and speed which underlie covert investigative and surveillance operations in police enforcement campaigns against all forms of criminality, considering that the master tapes of a motion picture required to be presented before the court consists of several reels contained in circular steel casings which, because of their bulk, will definitely draw attention, unlike diminutive objects like video tapes which can be easily concealed.[76] With hundreds of titles being pirated, this onerous and tedious imposition would be multiplied a hundredfold by judicial fiat, discouraging and preventing legal recourses in foreign jurisdictions.

Given the present international awareness and furor over violations in large scale of intellectual property rights, calling for transnational sanctions, it bears calling to mind the Court's admonition also in *La Chemise Lacoste, supra*, that —

> x x x. Judges all over the country are well advised to remember that court processes should not be used as instruments to, unwittingly or otherwise, aid counterfeiters and intellectual pirates, tie the hands of the law as it seeks to protect the Filipino consuming public and frustrate executive and administrative implementation of solemn commitments pursuant to international conventions and treaties.

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[76] *Rollo*, CA-G.R. CV No. 20622, 177-178.

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III

The amendment of Section 56 of Presidential Decree No. 49 by Presidential Decree No. 1987,[77] which should here be publicized judicially, brought about the revision of its penalty structure and enumerated additional acts considered violative of said decree on intellectual property, namely, (1) directly or indirectly transferring or causing to be transferred any sound recording or motion picture or other audio-visual works so recorded with intent to sell, lease, publicly exhibit or cause to be sold, leased or publicly exhibited, or to use or cause to be used for profit such articles on which sounds, motion pictures, or other audio-visual works are so transferred without the written consent of the owner or his assignee; (2) selling, leasing, distributing, circulating, publicly exhibiting, or offering for sale, lease, distribution, or possessing for the purpose of sale, lease, distribution, circulation or public exhibition any of the abovementioned articles, without the written consent of the owner or his assignee; and, (3) directly or indirectly offering or making available for a fee, rental, or any other form of compensation any equipment, machinery, paraphernalia or any material with the knowledge that such equipment, machinery, paraphernalia or material will be used by another to reproduce, without the consent of the owner, any phonograph record, disc, wire, tape, film or other article on which sounds, motion pictures or other audio-visual recordings may be transferred, and which provide distinct bases for criminal prosecution, being crimes independently punishable under Presidential Decree No. 49, as amended, aside from the act of infringing or aiding or abetting such infringement under Section 29.

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[77] Promulgated on October 5, 1985.

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The trial court's finding that private respondents committed acts in blatant transgression of Presidential Decree No. 49 all the more bolsters its findings of probable cause, which determination can be reached even in the absence of master tapes by the judge in the exercise of sound discretion. The executive concern and resolve expressed in the foregoing amendments to the decree for the protection of intellectual property rights should be matched by corresponding judicial vigilance and activism, instead of the apathy of submitting to technicalities in the face of ample evidence of guilt.

The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.[78]

A copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know what works he was indirectly copying, or did not know whether or not he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril. In determining the question of infringement, the amount of matter copied from the copyrighted work is an important consideration. To constitute infringement, it is not necessary that the whole or even a large portion of the work shall have been copied. If so much is taken that the value of the original is sensibly

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[78] 18 CJS, Copyright and Literary Property, Sec. 90, 212; 18 Am Jur 2d Copyright and Literary Property, Sec. 106, 391-392.

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diminished, or the labors of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute a piracy.[79] The question of whether there has been an actionable infringement of a literary, musical, or artistic work in motion pictures, radio or television being one of fact,[80] it should properly be determined during the trial. That is the stage calling for conclusive or preponderating evidence, and not the summary proceeding for the issuance of a search warrant wherein both lower courts erroneously require the master tapes.

In disregarding private respondent's argument that Search Warrant No. 87-053 is a general warrant, the lower court observed that "it was worded in a manner that the enumerated seizable items bear direct relation to the offense of violation of Sec. 56 of PD 49 as amended. It authorized only the seizur(e) of articles used or intended to be used in the unlawful sale, lease and other unconcerted acts in violation of PD 49 as amended. x x x."[81]

On this point, *Bache and Co., (Phil.), Inc., et al. vs. Ruiz, et al.*,[82] instructs and enlightens:

A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People *vs.* Rubio, 57 Phil. 384); or when the description expresses a conclusion of fact — not of law — by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of Abad Santos, *J.*,); or when the things described are limited to those

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[79] *Ibid, Id.*, Sec. 94, 217, 218.

[80] Universal Pictures Co. *v.* Harold Lloyd Corp. (CA9 Cal), 162 F2d 354; Arnstein *v.* Porter (CA2 Ny), 154 F2d 464.

[81] Original Record, 278; *Rollo*, 47.

[82] L-32409, February 27, 1971, 37 SCRA 823.

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which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). x x x. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. x x x.

On private respondents' averment that the search warrant was made applicable to more than one specific offense on the ground that there are as many offenses of infringement as there are rights protected and, therefore, to issue one search warrant for all the movie titles allegedly pirated violates the rule that a search warrant must be issued only in connection with one specific offense, the lower court said:

> x x x. As the face of the search warrant itself indicates, it was issued for violation of Section 56, PD 49 as amended only. The specifications therein (in Annex A) merely refer to the titles of the copyrighted motion pictures/films belonging to private complainants which defendants were in control/ possession for sale, lease, distribution or public exhibition in contravention of Sec. 56, PD 49 as amended.[83]

That there were several counts of the offense of copyright infringement and the search warrant uncovered several contraband items in the form of pirated video tapes is not to be confused with the number of offenses charged. The search warrant herein issued does not violate the one-specific-offense rule.

It is pointless for private respondents to insist on compliance with the registration and deposit requirements under Presidential Decree No. 49 as prerequisites for

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[83] Original Record, 279; *Rollo*, 47.

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invoking the court's protective mantle in copyright infringement cases. As explained by the court below:

> Defendants-movants contend that PD 49 as amended covers only producers who have complied with the requirements of deposit and notice (in other words registration) under Sections 49 and 50 thereof. Absent such registration, as in this case, there was no right created, hence, no infringement under PD 49 as amended. This is not well-taken.
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> As correctly pointed out by private complainants-oppositors, the Department of Justice has resolved this legal question as far back as December 12, 1978 in its Opinion No. 191 of the then Secretary of Justice Vicente Abad Santos which stated that Sections 26 and 50 do not apply to cinematographic works and PD No. 49 "had done away with the registration and deposit of cinematographic works" and that "even without prior registration and deposit of a work which may be entitled to protection under the Decree, the creator can file action for infringement of its rights." He cannot demand, however, payment of damages arising from infringement. The same opinion stressed that "the requirements of registration and deposit are thus retained under the Decree, not as conditions for the acquisition of copyright and other rights, but as prerequisites to a suit for damages." The statutory interpretation of the Executive Branch being correct, is entitled (to) weight and respect.
>
> xxx xxx xxx
>
> Defendants-movants maintain that complainant and his witnesses led the Court to believe that a crime existed when in fact there was none. This is wrong. As earlier discussed, PD 49 as amended, does not require registration and deposit for a creator to be able to file an action for infringement of his rights. These conditions are merely pre-requisites to an action for damages. So, as long as the proscribed acts are shown to exist, an action for infringement may be initiated.[84]

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[84] *Ibid.*, 275, 278; *Ibid.*, 44, 45.

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Accordingly, the certifications[85] from the Copyright Section of the National Library, presented as evidence by private respondents to show non-registration of some of the films of petitioners, assume no evidentiary weight or significance, whatsoever.

Furthermore, a closer review of Presidential Decree No. 49 reveals that even with respect to works which are required under Section 26 thereof to be registered and with copies to be deposited with the National Library, such as books, including composite and cyclopedic works, manuscripts, directories and gazetteers; and periodicals, including pamphlets and newspapers; lectures, sermons, addresses, dissertations prepared for oral delivery; and letters, the failure to comply with said requirements does not deprive the copyright owner of the right to sue for infringement. Such non-compliance merely limits the remedies available to him and subjects him to the corresponding sanction.

The reason for this is expressed in Section 2 of the decree which prefaces its enumeration of copyrightable works with the explicit statement that "the rights granted under this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works." This means that under the present state of the law, the copyright for a work is acquired by an intellectual creator from the moment of creation even in the absence of registration and deposit. As has been authoritatively clarified:

The registration and deposit of two complete copies or reproductions of the work with the National Library within three weeks after the first public dissemination or performance of the work, as provided for in Section 26 (P.D. No. 49, as amended), is not for the purpose of securing a copyright of

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[85] Exhibit Nos. 1, 2, 3 and 4; Original Record, 174-178.

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the work, but rather to avoid the penalty for non-compliance of the deposit of said two copies and in order to recover damages in an infringement suit.[86]

One distressing observation. This case has been fought on the basis of, and its resolution long delayed by resort to, technicalities to a virtually abusive extent by private respondents, without so much as an attempt to adduce any credible evidence showing that they conduct their business legitimately and fairly. The fact that private respondents could not show proof of their authority or that there was consent from the copyright owners for them to sell, lease, distribute or circulate petitioners' copyrighted films immeasurably bolsters the lower court's initial finding of probable cause. That private respondents are licensed by the Videogram Regulatory Board does not insulate them from criminal and civil liability for their unlawful business practices. What is more deplorable is that the reprehensible acts of some unscrupulous characters have stigmatized the Philippines with an unsavory reputation as a hub for intellectual piracy in this part of the globe, formerly in the records of the General Agreement on Tariffs and Trade and, now, of the World Trade Organization. Such acts must not be glossed over but should be denounced and repressed lest the Philippines become an international pariah in the global intellectual community.

WHEREFORE, the assailed judgment and resolution of respondent Court of Appeals, and necessarily inclusive of the order of the lower court dated November 22, 1988, are hereby **REVERSED** and **SET ASIDE.** The order of the court *a quo* of September 5, 1988 upholding the validity of Search Warrant No. 87-053 is hereby **REINSTATED**, and said court is **DIRECTED** to take and expeditiously

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[86] Martin T.C., *op cit.*, Vol. 2, 366.

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proceed with such appropriate proceedings as may be called for in this case. Treble costs are further assessed against private respondents.

SO ORDERED.

Narvasa, C.J., Padilla, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and *Torres, Jr., JJ.*, concur.

Bellosillo, J., no part in deliberations.

FIRST DIVISION

[G.R. No. 114143. August 28, 1996]

PHILIPPINE SCHOOL OF BUSINESS ADMINISTRATION (PSBA)-MANILA, *petitioner, vs.* NATIONAL LABOR RELATIONS COMMISSION (1st Division), FFW-PSBA UNION CHAPTER, RODOLFO RAMOS and DIOSDADO CUNANAN, *respondents.*

SYLLABUS

1. **LABOR LAW; NATIONAL LABOR RELATIONS COMMISSION; THE NLRC CORRECTLY CONCLUDED THAT PRIVATE RESPONDENTS WERE REGULAR EMPLOYEES OF PETITIONER; REASON.**— Respondent NLRC was correct in concluding that Cunanan and Ramos have been regular employees of petitioner since 1981 to 1989 when they were dismissed from employment without just cause. The records show that petitioner failed to refute in their Motion to Dismiss